

**THE HIGH COURT OF MADHYA PRADESH
RP-127-2021**

Gyanchand and ors. Vs. Smt. Neeti Manjhi and anr.

Gwalior, Dated : 31-08-2021

Shri K.S. Tomar, Senior Counsel with Shri Santosh Agrawal,
Counsel for the applicants.

Shri Anand Bhardwaj, Counsel for the respondent No. 1.

This review petition under Order 47 Rule 1 read with Section 151 of CPC has been filed against the order dated 04.01.2021 passed in MP No.3327/2020 passed by Hon'ble Shri Justice Vishal Mishra, by which the miscellaneous petition filed by the petitioner under Article 227 of the Constitution of India has been rejected.

Initially, Shri Santosh Agrawal tried to address this Court on the merits of the case and when a specific question was put to Shri Agrawal that even if the order is erroneous then whether the same can be reopened under the garb of review or not or the petitioner should have approached the Supreme Court assailing the order passed by the coordinate Bench of this Court, then Shri K.S. Tomar, Senior Advocate submitted that he may be permitted to withdraw this review petition with liberty to assail the authenticity of order dated 20.11.2020 as well as 02.04.2019 passed by the Trial Court, by which the application filed by the petitioner under Order 26 Rule 9 of CPC were rejected, in appeal if occasion arises.

Considered the submissions made by the counsel for the

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petitioner.

The order dated 02.04.2019 passed by the Trial Court was never challenged by the petitioner and, therefore, it attained finality. Thereafter, the order dated 20.11.2020 was passed by the Trial Court and application under Order 26 Rule 9 of CPC was dismissed on the ground of *res judicata*. In M.P. No.3327/2020, the petitioners had assailed both the orders and said miscellaneous petition was dismissed on merits by order dated 04.01.2021. If the liberty as prayed by the counsel for the applicants is granted then it would amount to nullifying the order passed by this Court which cannot be done. If the petitioners are aggrieved by the order dated 04.01.2021 passed in M.P. No.3327/2020, then they can assail the same before the Supreme Court, but they cannot re-agitate the matter before the First Appellate Court.

Accordingly, no case is made out warranting interference. The review petition fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Arun*

